



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.28418 of 2024
and WMP.No.30987 of 2024**

Kayalvili

.. Petitioner

Vs.

1. The Registrar,
Tamil Nadu Dr.MGR.Medical University,
69, Anna Salai, Chennai-3.

2. The Controller of Examination,
Tamil Nadu Dr.MGR.Medical University,
69, Anna Salai, Chennai-3.

3. The Medical Council of India,
Rep. By its Secretary,
MCI Building Pocker-14,
Sector-8, Dwaraka-1,
New Delhi.

4. Karpaga Vinayaga Institute of medical
Sciences and Research Centre,
Rep. By its Vice Chancellor,
Palayamoor, Chengalpattu,
Madhurangtakam.

..Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus directing the second respondent to award two marks to the petitioner as a grace mark in her General Surgery (Paper-1 General Surgery including Orthopaedics and paper II General



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all the papers. Under these circumstances, the first respondent university in respect of the final year Part-II General Surgery of MBBS course has introduced the General Surgery. According to the MCI Regulations, 1997 the total quantum of marks fixed for practical/clinical is 100, however, under the guidelines, the first respondent introduced three divisions mainly Theory including Viva, clinical and aggregate of the maximum marks at 300, in which, the petitioner has secured 170 out of 300 which is 56.67% as aggregate in general surgery and she is entitled to be declared passed in the final year MBBS and eligible to go for internship. She has obtained 56.67% as aggregate but despite the above, the first respondent University has declared that the petitioner has failed. The action of the respondent is against the MCI Regulations, 1997. Further, reference to the provisions of specific regulations for the MBBS program of Dr.MGR. Educational and Research Institute University, under Section 3 of the UGC Act, 1956 under provision 106.2 which relates to awarding of grace marks clearly states that marks upto a maximum of 5 marks may be awarded at the discretion of the University to a subject who has failed only in one subject but has passed in all other subject. Hence, the petitioner has made application before the second respondent and the same was not considered. Hence, the petitioner has filed the



present writ petition with the above said prayer.

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3. The contention of the learned Counsel for the petitioner is that as per Medical Council of India Regulations on Graduate Medical Education, 1997 (Amended up to 8th October 2016), Regulation 13(10) states that the grace marks up to a maximum of five marks may be awarded at the discretion of the University to a student who has failed only in one subject but has passed in all other subjects. The further contention of the learned Counsel for the petitioner is that though the respondent University has rejected the petitioner's representation stating that no grace marks will be given to any student appearing in any examination conducted after the publication of these regulations and MSR-2023 guidelines published on 16.08.2023, however, contrary to the provision of the MBBS regulations framed by the MCI which make no distinction between practical and theory components of a subject.

4. The learned counsel further submitted that the MCI regulations have been framed by the medical council of India to have uniform standard in medical education throughout India. When all the Universities in the country are following the MCI Regulations, the first respondent alone has created a gross discrimination by failing the



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petitioner, which is not sustainable. Hence, this Court may direct the second respondent to award two marks to the petitioner as a grace marks in her General Surgery in the final part II MBBS August 2024 examination as per the Regulation 13(10) of the Medical Council of India Regulations on graduate medical education, 1997.

5. The learned counsel appearing for the respondents submitted that in terms of the regulations of the University for 2009-2010, grace marks can be awarded for only one subject and such marks shall be awarded only for the examinations conducted semester-wise and not for practical examinations.

6. This Court has considered the submissions made on either side and perused the materials available on record.

7. On the face of the records, it appears that the petitioner, who is a final year MBBS student in the 4th respondent institution, though successfully finished the I, II and III year of the MBBS Course, failed in the practical component of one paper viz. General surgery Part II by two marks in the final Year. It also appears that the petitioner has given a



representation on 05.09.2024 to the respondent second respondent to consider her case leniently thereby awarding grace marks of two by following the MCI Regulations. But the same was rejected by the second respondent vide his letter dated 10.09.2024 stating that no grace marks will be given to any student appearing in any examination conducted after the publication of these regulations and MSR-2023 guidelines published on 16.08.2023. However, the Medical Council of India Regulations specifically recommends grant of grace marks in anyone subject, provided, the student has passed in all the other subjects.

8. Further, as per the decision reported in (2014) 3 MLJ 3076 (Vetriselvan and others vs. Registrar, Tamil Nadu Dr. MGR Medical University and others), the regulations of the Medical Council of India will prevail and there has to be consistency and the respondent University is bound to follow the regulations of the Medical Council of India. The Regulation 13.10 though gives a discretion to the University, it is not open to the University to pick and choose the candidates to be awarded the grace marks. So far, there is no challenge to the regulation of the Medical Council of India, which provides the award of grace mark of 5 in practical.



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9. As stated earlier, the Regulations of Medical Council of India will prevail in favour of awarding the grace marks in the practical examination to the petitioner, subject to other conditions. In the light of the above, the petitioner is entitled for the grace marks of two.

10. In view of the above discussion, this Court directs the controller of examination to award grace marks of two to the petitioner in her practical examination in General Surgery part-II by applying the applicable guidelines issued by the MCI within a period of one weeks from the date of receipt of a copy of this order and thereafter, send a communication to the petitioner forthwith.

11. With the above direction, the writ petition is disposed of. No costs. Connected miscellaneous petition is closed.

24.09.2024

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Note: Issue order copy on 28.10.2024

Speaking Order/ Non Speaking Order

Index: Yes/ No



Internet: Yes/ No

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M.DHANDAPANI,J.

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To

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